IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31. 01.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition Nos.19014 of 2003 and 7313 of 2005

WP. No.19014 of 2003.

Libra Construction & Finance Limited
16, Whites Road, 4th Floor
Royapettah, Chennai - 14,
represented by its authorised
Signatory Mr.K.P.Dave ... Petitioner

v.

1. Inspector of Police
Vennandur Police Station
Namakkal District

2. Deputy Superintendent of Police
Rasipuram, Namakkal District.

3. Superintendent of Police
Namakkal

4. Management of Tamil Nadu
Tobacco Co.Ltd.,
C76, Vinayagar Kovil Street
Swarnapuri, Salem - 4.

5. The Tamil Nadu Tobacco Company, Uzhiyargal
and Thozhilalargal Sangam, CITU, 1/23,
Alankattuputhur, Thengalpalayam Post - 636 601
Ponnammapettai, Salem - 636 601

6. Employees Union of Tamil Nadu Tobacco
Company Limited, 30-A, Gopal Street
Ponnammapettai, Salem - 636 601. ... Respondents

(Respondents No.5 and 6 are impleaded
as per order dated 23.12.2005 made in
W.P.M.P.NO.34388 of 2005.)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

W.P.NO.7313 of 2005:
The Tamil Nadu Tobacco Company, Uzhiyargal
and Thozhilalargal Sangam, (CITU),
(Regd.NO.933/98/SLM),
Vinayagapuram, Thoppukadu
Athanoor Post, Rasipuram Taluk
Namakkal District - 636 601. Petitioner

v.

1. The Government of Tamil Nadu
rep.by its Secretary, Labour and
Employment Department
Fort St.George, Chennai - 600 009

2. The Industrial Tribunal
City Civil Court Buildings
Chennai - 600 108

3. Tamil Nadu Tobacco Company Limited
represented by its Director,
No.1/23, Alankattupudur
Thengalpalayam, Atthanur (via)
Namakkal District - 636 601. Respondents.

Writ petition No.19014 of 2003 is filed seeking for the relief of issuance of writ of mandamus to direct respondents 1 to 3 to give necessary police protection to execute the warrant issued by the Subordinate Judge, Namakkal so that the petitioner would be able to take back possession of the property.

Writ petition No.7313 of 2005 is filed seeking for the relief of issuance of a writ of mandamus to direct the first respondent to consider and issue a reference relating to shifting of the third respondent factory from NO.1.13, Alankattupudhur, Thengalpalayam, Aathanur via Namakkal District to No.3/319, Puthur Itteri Road, Nethimedu, Salem - 636 302 to the second respondent Tribunal.

For Petitioner in W.P.
No.19014 of 2003 : Mr.R.Krishnamurthy,
Senior Counsel, for
Mr.A.Sasidharan

For Petitioner : Mr.N.G.R.Prasad for
in W.P.No.7313 of 2005 M/s.Rao and Reddy
and for Respondent 5 in
W.P.No.19014 of 2003

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

For Respondent - 3 : Mr.V.Karthik
in W.P.No.7313 of 2005
and for respondent - 4
in W.P.No.19014 of 2003

ORDER

W.P.No.19014 of 2003

This writ petition was originally filed seeking for the issuance of writ of mandamus to direct respondents 1 to 3, the Inspector of Police, Vennandur Police Station, Namakkal District; the Deputy Superintendent of Police, Rasipuram, Namakkal District; and the Superintendent of Police, Namakkal police station, Namakkal District, to give necessary police protection to execute the warrant issued by the learned Subordinate Judge, Namakkal so that the petitioner would be able to take back possession of the property. The said writ petition was filed by Libra Construction and Finance Ltd., by arraying the above said three respondents along with the management of Tamil Nadu Tobacco Ltd., as the fourth respondent.

2. The case of the writ petitioner was that the writ petitioner is the owner of the property in which the fourth respondent was running a company on rental basis for manufacture of cigarette. The fourth respondent vacated the premises in the year 2000, but failed to handover possession to the petitioner. The monthly rent of the premises was Rs.66,000/- and there was rental arrears from November 2000 onwards. Hence, the petitioner filed a civil suit in O.S. No.380 of 2000 before the Subordinate Judge, Namakkal for eviction. The suit was decreed on 25.09.2000. To execute the decree the petitioner filed an application in REP No.472 of 2002. However, the warrant issued by the executing Court could not be executed because of the resistance of the employees of the Tamilnadu Tobacco company, the fourth respondent. Hence, the bailiff could not take possession of the vacant premises and returned the warrant. The Subordinate Court, by his order dated 24.04.2003, passed an order to get possession of the property with the help of police protection. When the petitioner along with the bailiff approached the police, the respondents officials refused to give protection. Hence this writ petition was filed. This Court allowed the writ petition by order dated 25.08.2003 directing respondents 1 to 3 to give police protection to the petitioner for execution of the warrant issued by the competent civil court. That order came to be passed on the ground that the writ petition was admitted on 10.07.2003 and notice had been ordered to be issued and repeated adjournments were granted for the respondents to get instructions and in spite of all such indulgence granted by this Court

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the Government Counsel appearing for the respondent was not in a position to say as to why the police authorities, respondents 1 to 3 have refused to give police protection.

3. When the matter stood thus, respondents 1 to 3 filed an application in WPMP No.32977 of 2003 to clarify the order dated 25.08.2003 by putting forth a fresh fact to the effect that there was a litigation in respect of shifting of the premises of the fourth respondent between the management and the workers which warranted the management to file a writ petition in WP. No.16871 of 2001 in which a direction was given to the State Government to refer the dispute between the parties under section 10 of the Industrial Disputes Act for adjudication. On appeal by the fourth respondent in writ appeal No.2510 of 2001 the Division Bench, while confirming the order of the learned single Judge directed the management, fourth respondent to reopen the mill forthwith. In that order, while considering the contention made by the counsel, the Division Bench observed that until a decision was taken by the Government to refer the matter under section 10 of the Industrial Disputes Act, the factory shall run only at the existing place. That order was further carried on on appeal to the Supreme Court in SLP No.7787-7789 of 2002 and are pending.

4. On that clarification application, this Court by its order dated 17.11.2003, after referring to the facts brought to the notice of the Court in the clarification application, has stated in paragraph 6 that when the Division Bench has passed an order to run the factory in the very same place, any order directing the police officers to give police protection to clear the goods from the petition premises at the instance of the land owner cannot be granted by this Court. Of course, it was observed by this Court that that order would not preclude the writ petitioner to move the Division Bench and get a clarification as to their right to get possession in view of the subsequent facts as stated in the affidavit filed in support of the clarification petition, particularly, the fact of obtaining a decree for eviction from the competent civil Court. The statement of the writ petitioner that the writ petitioner was not a party to the earlier proceedings either before the learned single Judge or before the Division Bench or before the Supreme Court was also recorded and thus the clarification application was disposed off.

WEB COPY

5. Subsequently, the petitioner Libra Construction and Finance Ltd., filed WAMP No.1182 of 2005 in Writ Appeal No.2510 of 2001 to clarify the order made in the said writ appeal to the effect that in view of the reference made by the Government vide G.O. (T) 15 dated 03.01.2003 the petitioner is entitled for vacant possession of the property. That clarification application came to be disposed off by the Division Bench of this Court on 29.06.2005 by observing as follows :

> " 6. We have carefully perused the judgment of the Division Bench dated 22.03.2002. We are reluctant to pass any clarification order in the aforesaid judgment for two reasons. Firstly, an appeal has been filed against that

https://hcservices.ecourts.gov.in/hcservices/

judgment in the Supreme Court and leave has been granted by the Supreme Court on 02.09.2002.

7. When a Special Leave Petition is filed in the Supreme Court that does not mean that there is an appeal pending in the Supreme Court. Article 136 of the Constitution of India is not at all a regular forum of appeal. It is only a residual provision which empowers the Supreme Court to grant special leave to appeal in certain cases. Hence, merely because a special leave petition has been filed in the Supreme Court it does not mean that an appeal is pending in the Supreme Court.

8. However, when leave is granted in that special leave petition by the Supreme Court, then it has to be said that an appeal is pending in the Supreme Court. An appeal is a continuation of the original proceedings, and hence if any clarification is required by any party regarding the judgment of the Division Bench of this Court dated 22.03.2002 it would be appropriate for that party to approach the Supreme Court and get any such clarification as it seeks.

9. Secondly, a perusal of the judgment of the Division Bench dated 22.03.2002 shows that the Division Bench was concerned with a matter arising out of section 10 of the Industrial Disputes Act, and it was not concerned with eviction proceedings.

10. Mr.R.Krishnamoorthy, learned senior counsel for the petitioner has prayed for a clarification in this miscellaneous petition that the petitioner is entitled to get vacant possession of the premises at No.1/23, Alakattuputhur, Thengalpalayam, Rasipuram Taluk, Namakkal District.

11. In our opinion this prayer cannot be made in this writ appeal (for the reasons stated above), but it can be made before the learned single Judge who decided the writ petition No.19014 of 2003.

12. A perusal of the order dated 25.08.2003 passed in writ petition No.19014 of 2003 shows that the workmen were not impleaded in that writ petition. Since in that order it has been mentioned that the warrant for possession could not be executed because of the resistance by the workmen, in our opinion, the workmen were necessary parties in writ petition No.19014 of 2003.

https://hcservices.ecourts.gov.in/hcservices/

13. Although writ petition No.19014 of 2003 has been

disposed off by the learned single Judge in the special circumstances of the case, we permit the petitioner to file an application in that writ petition impleading the workmen represented by Mr.N.G.R. Prasad by serving notice on Mr.Prasad. Mr.Prasad may file a counter affidavit to that application within two weeks of service of notice of the application to him. In the counter affidavit the workmen can raise all legal and factual objections which they wish to raise."

6. Pursuant to the above order, the writ petitioner filed WPMP No.34388 of 2005 to implead the Tamil Nadu Tobacco Company, Uzhiyargal and Thozhilalargal Sangam, CITU, 1/23, Alankattuputhur, Thengalpalayam Post, Ponnammapettai, Salem and Employees Union of Tamil Nadu Tobacco Company Limited, Ponnammapettai, Salem as respondents 5 and 6 in writ petition No.19014 of 2003, which came to be ordered on 23.12.2005. Respondents 5 filed a counter affidavit contending inter alia, that the writ petition lacks in bona fides and it is a collusive action by the petitioner and the fourth respondent in order to frustrate the industrial dispute raised by the fifth respondent Union against the shifting of the factory from Namakkal to Salem. As against the ex parte order obtained by the petitioner on 25.09.2001, the fifth respondent filed a suit for in forma pauperis in POP No.11 of 2003. That was rejected, against which appeal in CMA No.12 of 2003 is pending adjudication. If the writ petition is allowed, it would frustrate the proceedings before the Industrial Disputes Tribunal in I.D. No.2 of 2003. The factory belongs to the petitioner in which S.S.Goenka is the director of the company. The fourth respondent wanted to retrench 25 workers when the fifth respondent placed their charter of demand in February 1999. Their application filed under section 25N of the Industrial Disputes Act to retrench the workers was rejected on 29.09.2000 and the review petition was also dismissed. The idea of shifting the factory from Namakkal to Salem was originally objected by the fifth respondent, which made the fourth respondent to file a writ petition No.16871 of 2001 seeking police protection. That writ petition was disposed off on 08.10.2001 stating that the entire controversy was relating to shifting of the factory from Namakkal to Salem and if that issue was referred for adjudication the entire problem would get sorted out. That was taken on appeal, as stated above, by the fourth respondent management in writ appeal No.2510 of 2001 and the order dated 22.03.2002 made in writ appeal was further carried on to the Supreme Court in SLP No.7787 - 7789 of 2002 and is pending before the Supreme Court. What was rejected at the instance of the fourth respondent by this Court is now sought to be achieved at the instance of the petitioner. After the order made in the writ appeal at the instance of the fourth respondent in writ appeal No.2510 of 2001, the Government referred a portion of the dispute, namely, whether the demand for wages from the date of closure of the factory on 16.09.2000 is justified or not in I.D. No.2 of 2003. As the fifth respondent was not satisfied with the reference, he filed writ petition No.7313 of 2005 to refer the issue relating to shifting the factory from Namakkal to Salem for adjudication. Finding that the company was not able to achieve the shifting of the factory, the fourth respondent has set up the writ petitioner and filed a suit and obtained ex parte decree against the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

fourth respondent, who deliberately remained absent. S.S. Goenka, the director of the petitioner is the owner of the fourth respondent. The petitioner also filed a writ petition in W.P. No.14054 of 1999 where it has claimed certain reliefs against the Central Excise Authorities and now the petitioner has filed the present writ petition as though the fourth respondent is someone different. The certificate issued by the concerned Village Administrative Officer on 27.09.1994 shows that the land on which the factory still stands is in the name of Goenka. Hence, the prayer sought for in the writ petition has to be rejected.

7. The writ petitioner filed a reply affidavit denying all the averments in the counter affidavit and stated that the petitioner has nothing to do with the fourth respondent. The petitioner and the fourth respondent are separate legal entities. One of the directors of the petitioner's company S.S. Goenka purchased the land in Athanur village in the year 1989. The petitioner company was formed in the year 1993. On 22.03.1993 the said Goenka sold the land occupied by the fourth respondent to the petitioner. The petitioner company is carrying on the business of finance, hire purchasing, leasing and real estate. As part of its business, it put up a building on the land purchased from the S.S.Goenka on an understanding that the land shall be sold by S.S.Goenka to the company at a subsequent date. Accordingly, on 22.03.1993 the sale was effected. It also used to purchase machineries and let it on hire to various manufacturers. It was in that context the building and machinery were given on lease to the fourth respondent for carrying on the manufacture of cigarette. The petitioner was demanding the fourth respondent to vacate the premises even from 1996. When the fourth respondent failed to vacate the premises, the petitioner was obliged to file a suit in O.S. No.380 of 2001. The petitioner was nowhere concerned about the I.D. No.2 of 2003, which is a dispute between 4th and fifth respondents.

8. The fourth respondent management filed an affidavit to contend that even prior to the shifting of the factory to Namakkal, the fourth respondent was originally running the factory only in Salem. Because of the policy of the Government as to the injuriousness of the consumption of cigarette, the production of cigarette has been considerably reduced which necessitated the fourth respondent to reduce the production. As the petitioner's activity was reduced to minimal, it was forced to transfer the factory to Salem but has been objected to by the petitioner. There was absolutely no activity going on in the disputed premises. The factory had been closed till 2000. That was the reason the fourth respondent has not opposed the suit filed by the petitioner for eviction.

9. The matter has been argued vehemently by Mr.N.G.R. Prasad. learned counsel appearing for the fifth respondent. He argued that what was not able to be achieved by the fourth respondent management is now sought to be achieved by the petitioner, which is impermissible in law. The suit filed by the petitioner is a collusive one. The shifting of the factory from the present premises to Salem was the subject matter in writ petition No.16871 of 2001, wherein this Court directed the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Government to refer the dispute the dispute between the parties under section 10 of the Industrial Disputes Act for adjudication, which finding has been confirmed by the Division Bench of this Court in writ appeal No.2510 of 2001 and the matter is seized off by the Supreme Court in SLP No.7787-7789 of 2002. Hence, police protection by way of mandamus cannot be granted.

10. On the other hand, Mr.Krishnamoorthy, learned senior counsel appearing for the petitioner submitted that whatever may be the dispute between the fourth respondent management and the fifth respondent workers union, the petitioner being the owner of the property his interest should not be prejudiced. From November 2000 onwards the petitioner is not able to get any amount towards rental of the property from the fourth respondent. Having left with no other remedy, the petitioner obtained a decree before the competent civil Court. That decree has to be executed and necessary orders for execution of decree could very well be passed in this writ petition. Mr.Karthick, learned counsel for the fourth respondent, in all material facts supported the case of the petitioner.

11. Heard the learned counsel on either side and perused the materials available on record.

12. At the outset, it should be stated that even in the order dated 17.11.2003 made in the clarification application filed before this Court at the instance of respondents 1 to 3, police officers, this Court has categorically stated in paragraph 6 that the prayer cannot be granted when the Division Bench has passed an order to run the factory in the very same place, any order directing the police officers to give police protection to clear the goods from the petition premises at the instance of the land owner cannot be granted by this Court. It was further observed by this Court that that order would not preclude the writ petitioner to move the Division Bench and get a clarification as to their right to get possession in view of the subsequent facts as stated in the affidavit filed in support of the clarification petition, particularly, the facts that the Tobacco Company, the lessee has closed down the premises and stopped their production, however, failed to handover the key and on that basis, the civil suit has been filed in the competent civil Court and decree has been obtained and get an appropriate and suitable direction for taking possession including the relief of police protection. Further, it is clear from the order of the learned single Judge in the writ petition filed at the instance of the fourth respondent in writ petition No.16871 of 2000, that the question whether the management be permitted to change the place of factory was also one of the issues raised and the conciliation officer has submitted his failure report on 09.08.2001. The order proceeded to state that so far the matter has not been referred to adjudication, any order made in that writ petition would prejudice the adjudication proceedings. Therefore, the only course left for this Court was to give a direction to the State Government to refer the dispute for adjudication including the question of shifting the unit to a different place within one month from the date of receipt of a copy of that order and directed the Tribunal to dispose of the dispute on reference under section 10(2)(a) of Industrial Disputes Act, 1947 within a period of six months from the

https://hcservices.ecourts.gov.in/hcservices/

date of reference.

13. That order has been little bit diluted by the Division Bench by observing that there cannot be any positive direction to the Government to refer the dispute under section 10 of the Act and the Government should exercise its power under section 10 of the Act. The Division Bench further observed the Government should decide the plea for reference made by the workmen within a period of 30 days from the date of receipt of a copy of that order and also further observed that till such decision is taken by the Government, the factory would be running only at the existing place. Of course, pursuant to the direction, now a reference has been made under section 10 of the Act in G.O. (T) 15 dated 03.01.2003 in I.D. No.2 of 2003.

14. The contention that the petitioner purchased the property and it is a separate entity and obtained a decree, in the above facts and circumstances of the case, cannot be given much weight for granting the relief for the simple reason that earlier the single Judge as well as the Division Bench have taken note of the dispute between the fourth and fifth respondents in respect of shifting of the factory also. The contention of the respondents that the suit filed by the petitioner is a collusive suit and the directors of the petitioner company are having much interest in the fourth respondent though denied by the petitioner, is a disputed question of fact cannot be decided in this writ petition. It is also evident that as against the ex parte decree, the fifth respondent filed an application to file a suit as an indigent person to have the ex parte decree set aside and the matter is now pending CMA No.12 of 2003 before the competent civil Court. Thus, the issue is yet to reach its finality. Hence, in the stated circumstances, the discretionary relief of mandamus for police protection cannot be granted. This writ petition is dismissed.

W.P.No.7313 of 2005

15. This writ petition is filed by the The Tamil Nadu Tobacco Company Uzhiyargal and Thozhilalargal Sangam seeking for the relief of direction in the nature of mandamus directing the first respondent, the Government of Tamilnadu represented by its Labour and Employment Department to consider and issue reference relating to shifting of the factory of Tamilnadu Tobacco company limited, the third respondent herein from No.1.13 Alankattupudhur, Thengalpalayam, Aathanur via Namakkal District to No.3/319, Puthur Itteri Road, Nethimedu, Salem to the second respondent Tribunal. The relief has been sought for on the facts and circumstances of the case, which we have just now dealt with above. A dispute arose between the petitioner and the third respondent company and referred to conciliation. The Conciliation Officer has submitted a failure report on 09.08.2001. Thereupon the third respondent management filed writ petition No.16871 of 2001 seeking police protection for shifting the unit from Namakkal to Salem. In that writ petition a direction was issued as stated in the above on 08.10.2001 to the Government to refer the dispute for adjudication. That was a positive direction to the Government to refer the dispute

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

under section 10 of the Act. But the Division bench directed the Government to consider the plea of the petitioner. Pursuant to that, a reference has been made in G.O. (T) 15 dated 03.01.2003 in I.D. No.2 of 2003 to the effect that whether the action of the Tamilnadu Tobacco Company in suspending the manufacturing activities since 16.12.2001 on the ground of stoppage of production and whether the claim of the Union for wages for the period of closure is justified or not? The present writ petition is filed on the ground that the reference ought to have been made by the Government in respect of the action of the management in trying to shift the factory from Namakkal to Salem.

16. Heard the learned counsel on either side and perused the materials available on record.

17. The order dated 08.10.2001 made in writ petition NO.16871 of 2001 proceeds as follows :

> "It is now seen that there was conciliation proceedings in reference to temporary stoppage of production. The question whether the management must be permitted to change the place of factory was also one of the issues raised and the conciliation officer has submitted his failure report dated 09.08.2001. So far, the matter has not been referred to adjudication. Any order in this writ petition will prejudice the adjudication proceedings. Therefore, the only course left for this Court is to give direction to the State Government to refer the dispute for adjudication including the question of shifting of the unit to a different place within one month from the date of receipt of a copy of this order and direct the Tribunal to dispose of the dispute on reference under section 10(2)(a) of the Industrial Disputes Act, 1947 within a period of six months from the date of reference."

That order was modified by the Division Bench on 22.03.2002 in Writ Appeal No.2510 of 2001. A portion of that order which is relevant for our purpose is extracted below :

> "A reference is sought for on the ground that the said attempt to shift is an attempt to retrench the workmen under the guise of shifting to a far off place and that in fact the place where the appellant's factor is being run belongs to the appellant, while the place which is chosen for shifting at a distance of 50 kms is a rented one. There cannot be any exception to the agitation of the employees seeking a reference. But there cannot be any positive direction to the Government to refer the matter under section 10 of the Act. We are satisfied that the circumstances exist to raise a cause for industrial dispute and the Government should exercise its power under section 10 of the Act. But it is needless to mention that exercise of such power under section 10 of the Act should be based on relevant considerations. It is also not out of context to mention that should the Government decide on extraneous considerations, it can be a cause for judicial review. Keeping this in mind, the Government has to decide the plea for reference made by the workmen, within a period of 30 days from the date of receipt of copy of this order."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

18. From the above it is clear that the shifting of the factory from Namakkal to Salem was also one of the issues raised in the conciliation proceedings. Hence, this writ petition is disposed off, as observed by the Division Bench by its order dated 22.03.2002, that the Court is satisfied that the circumstances exist to raise a cause for industrial dispute and the Government should exercise its power under section 10 of the Act. Both the writ petitions are disposed off accordingly. No costs. The connected miscellaneous petitions are consequently closed.

mf

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Inspector of Police
   Vennandur Police Station
   Namakkal District

2. Deputy Superintendent of Police
   Rasipuram, Namakkal District.

3. Superintendent of Police, Namakkal.

4. The Secretary to Government of Tamil Nadu,
   Labour and Employment Department,
   Fort St.George, Chennai - 600 009

5. The Industrial Tribunal
   City Civil Court Buildings
   Chennai - 600 108

+1 cc to the M/S.T.S.Gopalan & Co. Sr.No.5402

+1 cc to the M.A.Sasidharan Advocate Sr.No.5637

+1 cc to the Government Pleader Sr.No.5503

+1 cc to the M/S Row & Reddy, Advocate Sr.No.5300

MS(CO)
dcp/8.2.07

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/